

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**MANDALAY CORP., d/b/a
MANDALAY BAY RESORT & CASINO¹**

Employer

Case 28-RC-6596

**INTERNATIONAL UNION, SECURITY,
POLICE AND FIRE PROFESSIONALS
OF AMERICA (SPFPA)**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner, International Union, Security, Police and Fire Professionals of America (SPFPA), seeks an election in a unit comprised of all full-time and regular part-time security officers and field training officers (FTOs) employed by the Employer, Mandalay Corp., d/b/a Mandalay Bay Resort & Casino, performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act (the Act) at its Las Vegas, Nevada facility. The unit sought by the Petitioner would exclude the Employer's investigators, office clerical employees, professional employees, supervisors, and all other employees. Contrary to the Petitioner, the Employer urges that its part-time security guards should be excluded from any unit found appropriate because they do not share a community of interest with full-time security officers, are casual employees who work irregularly and sporadically, and do not have a reasonable expectation of continued employment. Contrary to the Petitioner, the Employer also urges that its FTOs should be excluded from any unit found appropriate because they are supervisors within the meaning of Section 2(11) of the Act. Finally, the Employer urges that its investigators should be included in any unit found appropriate because their work is functionally integrated with the Employer's security department. The Petitioner contends, however, that these individuals should be excluded from any appropriate unit because they are supervisors or because they do not share a sufficient community of interest with employees in the petitioned-for unit. The units proposed by the Petitioner and the Employer would include approximately 300 and 229 employees, respectively.

Based on the record as a whole and for the reasons more fully set forth below, I find that the petitioned-for unit appropriately includes all full-time and regular part-time security officers and FTOs. I find that the record fails to establish that FTOs are

¹ The name of the Employer appears as corrected at the hearing.

supervisors within the meaning of Section 2(11) the Act or that they should otherwise be excluded from the unit. I also find that the Employer's investigators are not supervisors within the meaning of the Act and that they share a sufficient community of interest with the Employer's security officers so as to warrant their inclusion in the unit.

DECISION

1. Hearing and Procedures: The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. Jurisdiction: At the hearing, the parties stipulated, and I find, that the Employer, Mandalay Corp., d/b/a Mandalay Bay Resort & Casino, a Nevada corporation, is engaged in the operation of a hotel and casino at 3950 Las Vegas Boulevard South, Las Vegas, Nevada, herein called the Employer's facility. During the past twelve months, the Employer, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received at the Employer's facility goods valued in excess of \$50,000 directly from points outside the State of Nevada. I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Board's exercise of jurisdiction in this matter will accomplish the purposes of the Act.

3. Labor Organization Status and Claim of Representation: The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. Statutory Question: As more fully set forth below, a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Unit Finding: This case presents three issues: (1) should a unit consisting of the Employer's security department personnel include part-time security officers; (2) should FTOs be excluded from the unit because they are supervisors within the meaning of Section 2(11) of the Act; and (3) should the Employer's investigators be included in the unit. To provide a context for my discussion of these issues, I will provide the record facts regarding the overall operation of the Employer's security department, including the relative wages and benefits of security department employees and the duties of the employees in the job classifications at issue. Finally, I will discuss the case law and analysis that supports my conclusions.

A. The Employer's Security Operations

The Employer operates a hotel, casino, and convention center on the Las Vegas strip in Las Vegas, Nevada. The Employer's facility consists of two hotels, a casino, various restaurants and lounges, a mall, two convention centers (the North Convention Center and the South Convention Center), five swimming pools, a five-story parking structure, and an events center.

The Employer's security department is responsible for ensuring the safety and security of all patrons and employees at the Employer's facility. The security department is comprised of a vice president of security, five security managers, one assistant training manager, 11 assistant shift managers, 224 full-time security officers (14 of whom are also classified as FTOs), 62 part-time security officers, and 5 investigators. Under the Employer's organizational chart, the operations manager, training manager, special events manager, and shift managers report directly to the vice president of security. The parties stipulated, the record shows, and I find that these individuals, as well as the assistant shift managers and convention assistant managers, are supervisors of the Employer within the meaning of Section 2(11) of the Act because they responsibly direct the work of the Employer's employees.

The full-time security officers report to the assistant shift managers, who in turn report to the shift managers. The part-time security officers report through the convention assistant managers to the special events manager. The investigators report directly to the operations manager. All security department personnel work in shifts (8:00 a.m. to 4:00 p.m., 4:00 p.m. to midnight, and midnight to 8:00 a.m.).

B. The Security Department Employees' Duties and Terms and Conditions of Employment

1. Full-Time Security Officers

As a general principle, full-time security officers are responsible for ensuring the safety of all of the Employer's guests and visitors throughout the facility, which requires them to patrol in and around the Employer's facility. Depending on the shift and their particular assignment, full-time security officers routinely perform fills (putting money on gaming tables), pit drops (taking money from gaming tables to the main cashier), escorts, and money stand-bys (guarding large sums of money on gaming tables). A full-time security officer may also be assigned to guard a particular area for an entire shift. While stand-bys and escorts are performed by all security department personnel, including part-time security officers and investigators, these tasks are usually performed by full-time security officers. Similarly, fills and pit drops are usually performed by full-time security officers, but part-time security officers may also perform duties as runners for gaming requests, which may include accompanying pit fills. Full time security officers are also assigned to crowd control duties for special events, together with part-time security officers and investigators.

2. Part-Time Security Officers

Part-time security officers perform the same work as full-time security officers, although their work is concentrated in the north and south convention centers, the loading dock areas, and pool areas. In January 2008, the Employer increased the number of its part-time security officers (sometimes called convention officers), from approximately 15 to approximately 65. The Employer increased its part-time security officer contingent

because of an increase in convention business and because it wished to end the practice whereby its convention customers would hire their own outside security officers. The Employer sought to be the exclusive provider of security services at its facility because it believed that an in-house force would provide the highest level of safety for its patrons.

At the hearing, the parties stipulated that the working conditions of full-time and part-time security officers were the same, with certain specified exceptions or as “otherwise established in the record.” One specified exception is that “Full-time security officers may be assigned to work in any location of the Employer’s property, while part-time security officers are assigned to work only in the Convention and Pool areas. In limited situations involving emergency circumstances, part-time security officers may be required to work in other areas of the Employer’s property.”

This specified exception is further clarified by the record. The record establishes that, while part-time security officers routinely work in the convention, loading dock, and the pool areas of the Employer’s facility, they also perform tasks throughout the Employer’s facility. For instance, one task routinely performed by part-time security officers is the transportation of house money from various points throughout the Employer’s facility. Similarly, part-time security officers may also be required to escort a patron to and from various points throughout the facility. Part-time security officers are also subject to be assigned to any part of the facility, as was the case during a recent temporary blackout at the Employer’s facility, where part-time security officers helped move patrons to lighted areas of the facility. Similarly, part-time security officers may be assigned to any area of the Employer’s facility during special events, such as the recent March Madness NCAA basketball tournament. The record further reflects that full-time security officers work in the convention, loading dock, and the pool areas of the Employer’s facility and, when they do so, they may work side-by-side with part-time security officers.

Another specified exception relates to the hours worked by security officers. The parties stipulated that part-time security officers are restricted to working a maximum of 32 hours per week, but that there is no corresponding restriction on the number of hours a full-time security officer may work. However, the record also contains a table prepared by the Employer, reflecting the number of hours worked by part-time security officers since January 2008. This table shows that several part-time security officers have worked more than 40 hours in various payroll weeks.

The record also establishes that full-time security officers are assigned a regular work schedule, consisting of a specific shift, start and quit times, and days off. In contrast, part-time security officers are contacted by phone as work opportunities arise, and they may accept or decline the assignment. This is the only manner in which part-time security officers are offered work, and they do not have regular schedules or hours. At hearing, the Employer presented an exhibit detailing of the number of hours part-time security officers worked pursuant to this system during a 12-week period between January 28 and April 14, 2008. This exhibit reflects that during this period, 4 of the 62 part-time security officers listed worked no hours; 14 worked more than 200 hours; 18

worked more than 100 hours; and 13 worked more than 48 hours. The average total number of hours worked by part-time security officers, excluding the four who worked no hours, was approximately 130 hours. One part-time security officer had logged 330.5 hours of work. The exhibit also shows that numerous part-time security officers worked hours in most of the 12 weeks prior to the filing of the petition.

Finally, the record establishes that part-time security officers are usually supervised by convention assistant managers and the special events manager. In contrast, full-time security officers are supervised by assistant shift managers and shift managers. However, the record reflects that part-time security officers are also subject to supervision by assistant shift managers and shift managers. More specifically, shift and assistant shift managers have the authority to correct, direct, and issue discipline to both full-time and part-time security officers, and part-time security offices may consult with shift and assistant shift managers as needed. When both full-time and part-time security officers work in the same area of the Employer's facility, they report to the same manager. Indeed, the record indicates that the chain of command for any security officer depends in large degree to where that officer is stationed, and not whether the officer is full-time or part-time.

3. Field Training Officers

FTOs are full-time security officers who, on an as-needed basis, are assigned to work with new full-time security officers as part of the new officer's training on their daily functions as security officers. FTOs also train part-time security officers, although the training provided to part-time security officers is less extensive. If there are no new employees on duty, the FTOs perform normal full-time security officer duties. The record does not reveal how often FTOs perform training, as opposed to regular security officer duties. In addition, while most of the on-the-job training for new security officers is performed by FTOs, there are cases when other security officers provide training for full-time security officers. For instance, when learning the operation of the key control office -- where employees check out keys for use in their respective daily functions -- a new security officer may be trained by a full-time security officer.

FTOs are paid a \$.50 hourly differential while performing FTO duties. Even with this differential, there are some non-FTO full-time security officers who earn a higher hourly rate than FTOs. FTOs also receive an additional 40 hours of classroom training related to their FTO duties, which other security officers do not receive. FTOs do not attend the Employer's managers' meetings, but they do attend instructional meetings to ensure that they perform their training functions in a uniform manner.

The record reflects that, when training a new security officer, an FTO accompanies that officer throughout the shift. At the end of the shift, the FTO completes a Daily Observation Report, in which, based on his observations during the shift, he rates the security officer on a scale of 1 to 7 on various aspects, including appearance, attitude, knowledge, performance, and relationships. The FTO also completes each day a "Critical Task" form, which lists the day-to-day functions that a full-time security officer

is required to perform. At the end of each week of training, the FTO completes an “End of Phase/Weekly Evaluation” form, in which he recommends whether the security officer is ready to go on to the next phase of on-the-job training or whether he or she should be provided remedial training.

The decision as to whether an officer has successfully completed training or should receive remedial training resides with the Employer’s shift managers. In making this determination, shift managers review and give great weight to the FTOs’ ratings and recommendations. Shift managers also decide whether an officer should be retained as an employee. In making this determination, the shift manager reviews all available information, including FTO reports, observations of shift managers and other supervisors, and the officer’s complete training file, including classroom training reports and comments entered by shift managers and other supervisors.

The record shows that FTOs do not have the authority to send a trainee home, nor do they have the authority to discipline or terminate employees.

4. Investigators

The Employer’s investigators report to the Employer’s operations manager, who in turn reports to the vice president of security. Investigators investigate suspected criminal activity at the Employer’s facility or breaches of the Employer’s policies that may involve illegal activities. Investigators may also investigate security officers, and discipline may result from such investigations. Such discipline would be issued by the Employer’s operations manager.

The record reflects that investigators have significant contact with the Employer’s full and part-time security officers. For example, if a patron is suspected of passing counterfeit currency, a security officer would be charged to take the patron to an investigator for questioning. Similarly, investigators may be assigned to guard or protect a certain area of the Employer’s facility, as was the case recently when a number of investigators were assigned to monitor an area in one of the convention centers, where other security officers were also working, in connection with an investigation of a contract security firm. Investigators may also be assigned to perform money stand-bys, escorts, and crowd control at special events, such as boxing or concerts. While performing crowd control work, investigators may adjust security officers’ location or assignments as needed. Finally, investigators may perform undercover work, during which they coordinate with security officers.

Unlike full-time or part-time security officers, who are paid on an hourly basis, investigators are paid an annual salary of between \$39,000 and \$44,900 (\$39,000 would equate to an hourly rate of approximately \$18.75 per hour).

5. Other Terms and Conditions of Employment

a. Break Areas; Uniforms; Equipment

The record reflects that all security officers are able to use either of the two break areas provided for employees (one is in the south convention center and the other is in the employee dining room). The security officers, including FTOs, share the same parking areas and same locker room, which is in the security department's briefing room.

Full-time security officers, including FTOs, and part-time security officers wear the same uniforms, which consist of navy blue pants, white uniform shirts, and a badge with the Employer's logo. There is nothing in their appearance that would designate an officer as either full or part-time. Investigators wear street clothes, including suits issued by the Employer. Both full and part-time security officers use radios at work. These radios are used to communicate with security control. Radio frequencies are dependent on the location of the property from which a call is made, not on whether the officer is full or part-time. Both full and part-time officers use shields and handcuffs, although these items are permanently assigned to full-time security officers while part-time officers must sign them out each day they work. In addition, full-time security officers are assigned and trained on the use of pepper spray, while part-time security officers are not.

b. Wages and Benefits

The starting hourly wage rate for full-time officers is \$11.75, and the top hourly rate is \$18.00. Part-time security officers are paid \$14.00 per hour. As previously noted, FTOs receive an additional \$.50 per hour while performing FTO duties. Full-time security officers, including FTOs, are eligible to participate in the Employer's health, retirement, and other benefit plans. Part-time security officers are not eligible. The parties stipulated that, to be eligible to participate in these plans, an employee must work an average of 30 hours per week.

c. Training

The amount of training given to full-time and part-time security officers also varies. Full-time security officers receive 80 hours of classroom training from the Employer, while part-time officers receive 40 hours of classroom training. Every new security officer is assigned to an FTO. FTOs work with full-time security officers for a minimum of four weeks. In contrast, they work with part-time security officers for approximately 8 hours. The record reflects that the reason for this disparity is that full-time security officers have more responsibilities than part-time officers and because part-time officers are usually assigned to only a few areas of the Employer's facility. Full-time security officers start their shifts with a security shift briefing. Part-time security officers and investigators do not regularly attend such briefings.

The record is silent as to the extent of interchange between or among any of the groups at issue.

C. Legal Analysis and Conclusions

In resolving the issues related to the scope of the unit in this matter, which involves a unit consisting of guard employees as defined in Section 9(b)(3) of the Act, I am mindful that it is the Board's policy to include all of an employer's guards in a single unit unless "there is a subgroup with a separate community of interest that warrants separate representation." *University of Tulsa*, 304 NLRB 773, 774 (1991).

1. The Part-Time Security Officers Are Not Casual Employees and Share a Community of Interest With Full-Time Security Officers

The Employer contends that the part-time security officers are casual employees who should not be included in the unit or, in the alternative, that they should be excluded from the unit because they lack a community of interest with the full-time security officers.

Under Board law, part-time employees are to be included in a unit with full-time employees whenever they perform work within the unit on a regular basis for a sufficient period of time during an appropriate calendar period so as to demonstrate that they have a substantial and continuing interest in the wages, hours, and working conditions of the unit. *New York Display & Die Cutting Corp.*, 341 NLRB 930 (2004); *Arlington Masonry Supply*, 339 NLRB 817 (2003); *Pat's Blue Ribbons and Trophies*, 286 NLRB 918 (1987) see also *Muncie Newspapers, Inc.*, 246 NLRB 1088, 1089 (1979) (Board considers "such factors as regularity and continuity of employment, tenure of employment, similarity of work duties, and similarity of wages, benefits, and other working conditions"). The standard used by the Board to determine the regularity of part-time employment is to examine whether the employee at issue worked an average of at least four hours per week during the quarter preceding the eligibility date. *Davison-Paxon Company*, 185 NLRB 21 (1970); *Arlington Masonry*, 339 NLRB at 819. Where "on-call" employees have a substantial working history, with a substantial probability of employment and regular hiring, they are considered regular part-time employees. *Davison-Paxon*, 185 NLRB at 23, 24. The fact that an on-call employee may reject a job opportunity is not a determinative factor. *Pat's Blue Ribbons*, 286 NLRB at 918; *Mercury Distribution Carriers*, 312 NLRB 840 (1993).

Based on the record as a whole, as well as an analysis of the factors considered by the Board in such cases, I find that the Employer's part-time security officers' relationship to their job demonstrates a community of interest with the full-time security officers and, therefore, they should be included in the unit found appropriate herein. In reaching this conclusion, I have relied on several factors. First, most of the Employer's part-time security officers have enjoyed regular and continuing employment during the 12 weeks preceding the filing of the petition. More specifically, during the payroll

periods from January 28 to April 14, 2008, 32 part-time security officers worked more than 200 hours, for an average of at least 16.6 hours per week; 18 others worked more than 100 hours, for an average of at least 8.3 hours per week; and 13 worked at least 48 hours, for an average of 4 hours per week. In addition, the record shows that numerous part-time security officers worked hours in most of the 12 weeks prior to the filing of the petition. The record does not indicate that part-time security officers are at risk of suffering a reduction of available hours or that the Employer intends to reduce their work hours in the future. On the contrary, the record reflects that the Employer has extended the areas patrolled by part-time security officers to include its pool areas.

Second, as to the tenure of part-time security officers, the Employer has employed such officers since before January 2008. Indeed, since January 2008, the Employer has expanded its part-time officer workforce from 15 to approximately 62, has sought to reduce its reliance on security provided by clients or third parties, and has expanded the areas served by part-time security officers.

Third, part-time security officers regularly perform unit work. The record reflects that they perform essentially the same or similar work duties as full-time security officers, and they often work under the same supervision and in the same areas.

Finally, full and part-time security officers are paid at a similar level. Full-time security officers may be paid anywhere between \$11.75 and 18.00 per hour. The hourly rate of part-time security officers falls roughly in the middle of this range, \$14.00. In many respects, the terms and conditions of employment for full and part-time security officers are identical, including uniforms, badges, handcuffs, locker rooms, break and parking areas, and, in certain circumstances, supervision. Although part-time security officers do not receive the benefits or amount of training available to full-time security officers, the similarities in wages and working conditions are sufficient to support a finding that they share a community of interest with full-time security officers.

Having concluded that part-time security officers should be included in the unit, I now turn to what will be the basis for their eligibility to vote in any election. In devising eligibility formulas to fit the unique conditions of any particular industry, the Board seeks “to permit optimum employee enfranchisement and free choice, without enfranchising individuals with no real continuing interest in the terms and conditions of employment offered by the employer.” *Steppenwolf Theatre Company*, 342 NLRB 69, 70, 71 (2004), citing *Trump Taj Mahal Casino*, 306 NLRB 294, 296 (1992); *DIC Entertainment, L.P.*, 328 NLRB 660 (1990), enf’d. 238 F.3d 434 (D.C. Cir 2001). Accordingly, applying the Board’s *Davison-Paxon* formula, I find that those part-time security officer employees who work an average of four hours or more per week during the quarter preceding the eligibility date are eligible to vote in the election. *Davison-Paxon*, 185 NLRB at 23, 24; *May Department Stores Company*, 175 NLRB 514 (1969); *Allied Stores of Ohio, Inc.*, 175 NLRB 966 (1969).

2. Field Training Officers Are Not Supervisors Within the Meaning of Section 2(11) of the Act

The Employer next contends that FTOs are supervisors within the meaning of Section 2(11) of the Act and should, therefore, be excluded from the unit found appropriate. Section 2(11) of the Act defines the term “supervisor” as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature, but requires the use of independent judgment.

The possession of any one of these authorities is sufficient to deem the individual vested with such authority as a supervisor. *American Commercial Barge Line Co.*, 337 NLRB 1070 (2002); *Westwood Health Care Center*, 330 NLRB 935 (2000); *Pepsi-Cola Co.*, 327 NLRB 1062 (1998); *Allen Services Co.*, 314 NLRB 1060 (1994). Persons with the power “effectively to recommend” the actions described in Section 2(11) are supervisors within the statutory definition. *Sun Refining & Marketing Co.*, 301 NLRB 642, 649-650 (1991); and *Custom Bronze & Aluminum Corp.*, 197 NLRB 397 (1972).

Individuals are statutory supervisors if: (1) they hold the authority to engage in any one of the 12 supervisory functions (e.g., “assign” or “responsibly to direct”) listed in Section 2(11); (2) their “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment”; and (3) their authority is held “in the interest of the employer.” *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001). Supervisory status may be shown if the putative supervisor has the authority either to perform a supervisory function or to effectively recommend the same. “[T]he burden of proving supervisory status rests on the party asserting that such status exists.” *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003); accord *Kentucky River*, 532 U.S. at 711-712 (deferring to existing Board precedent allocating burden of proof to party asserting that supervisory status exists). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. *Dean & Deluca*, 338 NLRB at 1047; *Bethany Medical Center*, 328 NLRB 1094, 1103 (1999). Thus, the controlling factor is the actual possession of an enumerated authority and its use with independent judgment, not mere conclusionary assertions by the parties concerning the duties and authority of the classifications as issue.

In this case, the burden of establishing the FTOs supervisory status lies with the Employer. The Employer contends that FTOs are statutory supervisors based on their training and evaluation of new security officers. I find that the Employer has not met its burden.

First, it is well settled that the “[t]he mere training of other employees by a senior and more experienced employee or that employee’s evaluating another employee’s skills in an assignment of routine work also doesn’t establish supervisory status.” *The Ohio River Company*, 303 NLRB 696, 716 (1991) (citing *Sears, Roebuck & Company*, 292 NLRB 753 (1989)). This principle is not altered by the forms FTOs complete as part of their FTO duties. These forms do not indicate supervisory status. On the contrary, the Daily Observation Reports appear to be designed to provide the FTO with a comprehensive guide for his observation and training. Similarly, the weekly reports which are reviewed by shift managers to determine whether a new security officer should continue with training, have no apparent effect on an officer’s pay or other benefits. The decision to retain a security officer resides solely with the shift managers, who independently review materials in addition to reports completed by FTOs, and rely on their own observations, in making any such determination.

Second, the Board has held that where a person performs both supervisory and nonsupervisory functions, the test is whether the person spends a regular and substantial portion of his working time in a supervisory position, or whether such work is merely sporadic and insignificant. *Benchmark Mechanical Contractors*, 327 NLRB 829 (1999); and *Canonie Transportation Co.*, 289 NLRB 299, 300 (1988). Although the burden of proving that the FTOs spent a regular and substantial amount of their working time performing supervisory functions, the record is devoid of any evidence of how much time they performed FTO duties, as opposed to regular security officer work. The record also does not establish that the Employer hires new employees in numbers sufficient to allow FTOs to perform FTO duties during a substantial portion of their working time or with any regularity. Thus, even assuming the FTO work was supervisory in nature, the record fails to establish that FTOs perform FTO functions on a regular and substantial basis.

Based on the foregoing, I find that FTO employees are not supervisors within the meaning of Section 2(11) of the Act and I shall include them in the unit found appropriate herein.

3. The Investigators are Not Statutory Supervisors and Share a Community of Interest With Employees in the Petitioned-For Unit

Finally, the Petitioner urges that investigators should be excluded from petitioned-for unit because they are supervisors and otherwise lack a community of interest with other unit employees. The Employer contends that investigators share such a community of interest and should be included in the unit.

As a threshold matter, I find that the Employer’s investigators are guards within the meaning of Section 9(b)(3) of the Act, because they enforce against employees and other persons rules to protect the property of the Employer or to protect the safety of persons on the Employer’s premises. *Petroleum Chemicals*, 121 NLRB 630 (1958).

In support of its contention that the Employer's investigators are statutory supervisors, the Petitioner relies on the investigators' ability to make changes to security officers' assignments during special events, as conditions warrant. The evidence presented does not establish the frequency or number of such instances or whether such adjustments to assignments are significant. I find that the record evidence in this regard is insufficient to find that investigators exercise supervisory authority or to exclude the investigators from the unit.

Similarly, I find that the record does not support the Petitioner's contention that the investigators possess a separate community of interest that warrants separate representation. In *Publix Super Markets, Inc.*, 343 NLRB 1023, 1024 (2004), the Board summarized the factors used in determining whether unit employees possess a community of interest. These factors include: (1) functional integration; (2) frequency of contact with other employees; (3) interchange with other employees; (4) degree of skill and common functions; (5) commonality of wages, hours, and other working conditions; and (6) shared supervision. See *Ore-Ida Foods*, 313 NLRB 1016 (1994), *affd.* 66 F.3d 328 (7th Cir. 1995).

In this matter, the work performed by investigators is functionally integrated with the work performed by security officers, and, as a result, the two groups have significant contact with one another. The two groups work as a team on routine security matters such as crowd control, as well as non-routine matters, such as investigation of criminal activity, in which security officers are responsible for escorting suspects to the investigators. The two groups also perform many of the same duties, including providing security services around money and crowds. While investigators are paid on a salaried basis, the starting amount of their salary, viewed as an hourly rate, is not significantly higher than the highest rate paid to full-time security officers (\$18.75 vs. \$18.00). Investigators report to the operations manager, the full-time and part-time security officers report to the shift managers and convention assistant managers, respectively, all of whom are in the Employer's security department. The record also suggests, however, that the supervision of security work is dependent, in part, on the location within the Employer's facility where such work is being performed.

To be sure, differences exist between the terms and conditions of employment for investigators and other security officers, including the latter's wearing of uniforms. Although an argument can be made that these differences militate against finding that a comprehensive community of interest exists, the record as a whole supports the conclusion that the investigators possess a sufficient community of interest with other unit employees so as to warrant their inclusion in the unit. Moreover, the inclusion of the investigators in the unit in this case is particularly appropriate because it is the Board's policy to include all of an employer's guards in a single unit unless "there is a subgroup with a separate community of interest that warrants separate representation." *University of Tulsa*, 304 NLRB 773, 774. I find that investigators do not have a separate community of interest that warrants separate representation. Accordingly, I will include the Employer's approximately five investigator employees in the unit found appropriate herein.

In sum, based upon the foregoing and the record as a whole, including the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time security officers, field training officers, and investigators employed by Mandalay Corp., d/b/a Mandalay Bay Resort & Casino, a Nevada corporation, is engaged in the operation of a hotel and casino at 3950 Las Vegas Boulevard South, Las Vegas, Nevada; but excluding all other employees, office clerical employees, professional employees, managers and supervisors as defined in the Act.

There are approximately 301 employees in the unit found appropriate herein.

DIRECTION OF ELECTION

I direct that an election by secret ballot be conducted in the above unit at a time and place that will be set forth in the notice of election that will issue soon, subject to the Board's Rules and Regulations. The employees who are eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Part-time security officers who have worked an average of four hours or more per week during the quarter preceding the eligibility date shall be eligible to vote. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and, if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that within seven (7) days of the date of this Decision, the Employer file with the undersigned, two (2) copies of election eligibility lists containing the full names and addresses of all eligible voters. The undersigned will make this list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, the undersigned must receive the list at the National Labor Relations Board Resident Office, 600 Las Vegas Boulevard South, Suite 400, Las Vegas, Nevada, 89101-6637, on or before May 23, 2008. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street NW, Washington DC 20570. This request must be received by the Board in Washington, DC, by the close of business at 5:00 p.m. (EDT) on May 30, 2008.** The request may be filed electronically through E-Gov on the Board's website, www.nlr.gov,² but may **not** be filed by facsimile.

Dated at Phoenix, Arizona, this 16th day of May 2008.

/s/Cornele A. Overstreet

Cornele A. Overstreet, Regional Director
National Labor Relations Board, Region 28

² Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-Filing page the user should select the option to file documents with the **Board/Office of the Executive Secretary**. To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the **File Documents** button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the **Accept** button. Then complete the E-Filing form, attach the document containing the request for review, and click the **Submit Form** button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under **E-Gov** on the Board's web site, www.nlr.gov.